

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Uniroyal Technology Corporation Royalite Division
and United Paperworkers International Union,
Local No. 905, a/w United Paperworkers Inter-
national Union, AFL-CIO, CLC. Case 25-CA-
24220**

November 30, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND TRUESDALE

Upon a charge filed on September 25, 1995, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on October 6, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 25-RC-9442. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On November 3, 1995, the General Counsel filed a Motion to Strike Portions of Respondent's Answer and for Summary Judgment. On November 7, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On November 21, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain following the Union's certification,¹ but attacks the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not

¹ In its response, the Respondent moved to amend par. 5(c) of its answer to admit that the Union was certified by the Board. The Respondent's motion to amend its answer is granted.

raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a corporation with an office and place of business in Warsaw, Indiana, has been engaged in the manufacture and sale of plastic sheet stock. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped from its Warsaw, Indiana facility goods valued in excess of \$50,000 directly to points outside the State of Indiana. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.³

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held February 10, 1995, the Union was certified on July 20, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees employed by the Respondent at its Warsaw, Indiana Facility; BUT EXCLUDING all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About July 31 and September 11 and 14, 1995, the Union requested that the Respondent bargain collectively and, since about July 20, 1995, and specifically

² As we are granting the General Counsel's Motion for Summary Judgment, we find it unnecessary to rule on the General Counsel's motion to strike portions of the Respondent's answer.

³ The Respondent in its answer states that it is without knowledge or information sufficient to form a belief as to whether the Union is a labor organization within the meaning of Sec. 2(5) of the Act. By entering into the stipulated election agreement in the underlying representation proceeding, however, the Respondent effectively agreed that the Union is a labor organization. At no time during the underlying representation proceeding did the Respondent raise a question concerning the Union's status as a 2(5) labor organization. Accordingly, we find that the Respondent is precluded from litigating the issue in this proceeding. See, e.g., *Biewer Wisconsin Sawmill*, 306 NLRB 732 fn.1 (1992), and cases cited there.

by letter dated September 12, 1995, the Respondent has failed and refused to do so. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since July 20, 1995, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Uniroyal Technology Corporation, Royalite Division, Warsaw, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Paperworkers International Union, Local No. 905, a/w United Paperworkers International Union, AFL-CIO, CLC as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All production and maintenance employees employed by the Respondent at its Warsaw, Indiana Facility; BUT EXCLUDING all office clerical

employees, all professional employees, and all guards and supervisors as defined in the Act.

(b) Post at its facility in Warsaw, Indiana, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 30, 1995

William B. Gould IV, Chairman

Charles I. Cohen, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Paperworkers International Union, Local No. 905, a/w United Paperworkers International Union, AFL-CIO, CLC as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All production and maintenance employees employed by us at our Warsaw, Indiana Facility; BUT EXCLUDING all office clerical employees,

all professional employees, and all guards and supervisors as defined in the Act.

UNIROYAL TECHNOLOGY CORPORATION
ROYALITE DIVISION